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APPL. OF THE CITY OF SAN ANTONIO §  
TO AMEND ITS [CCN] FOR THE §  
SCENIC LOOP 138-KV TRANS. LINE IN §  
BEXAR COUNTY, TX §

STATE OFFICE OF  
ADMINISTRATIVE HEARINGS

**SAVE HUNTRESS LANE AREA ASSOCIATION'S  
RESPONSE TO STEVE CICHOWSKI'S OBJECTIONS TO  
AND MOTIONS TO STRIKE CROSS-REBUTTAL TESTIMONY**

Save Huntress Lane Area Association (“SHLAA”), an intervenor, submits this timely response to the objections by Mr. Steve Cichowski.

Mr. Cichowski’s general objection is responded to in bold text following a short italicized summary of the lengthy and argumentative general objection. Mr. Cichowski’s specific objections are then set forth in italicized text, and the SHLAA response thereto is set forth in bold text. As the responses below show, those objections are without merit and should be overruled, and the associated motions to strike denied.

*General Objection to Entire Testimony: “except for isolated instances, it is impossible to tell whose testimony is being offered”; letter of “Texas Parks and Wildlife Commission [sic] submitted to the PUC prior to any of the witnesses’ direct testimony being filed”; “does not consist of cross-rebuttal testimony”; “pages 4 thru 6 consist, not of cross-rebuttal testimony”; “Pages 12 through 37 consist . . . of the witness . . . opinion on what some other intervenor believes or prefers.”*

**RESPONSE:**

**As Mr. Cichowski admits, general objections are no longer allowed. Therefore, his general objection should be overruled on that ground alone.**

**Without waiver of the foregoing, SHLAA responds to his general objection because it is without any merit.**

**The SHLAA cross-rebuttal testimony followed the same approach as the SHLAA direct testimony, for which there was no prior evidentiary objection. In both, the three fact witness provided a single pre-filed document, expressly indicating at the beginning of each that the testimony is provided by all three of them “except to the extent identified otherwise in the answer to a particular question.” Therefore, if there is not a specific witness identified, the testimony is offered by all three.**

**Mr. Cichowski complains that the Texas Parks and Wildlife Department (“TPWD”) updated recommendation letter was submitted before intervenor direct testimony was due, and in essence argues that the cross-rebuttal testimony concerning that TPWD letter is improper**

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supplemental direct. This is not correct. The intervenor direct testimony was due February 17, 2021, but due to Winter Storm Uri the deadlines were relaxed, and SHLAA timely filed its direct testimony on February 19, 2021. The TPWD update letter is dated Feb. 18, 2021, but it was not made available to the parties until CPS Energy included it in its February 23, 2021 supplemental discovery response, available at [http://interchange.puc.texas.gov/Documents/51023\\_578\\_1112434.PDF](http://interchange.puc.texas.gov/Documents/51023_578_1112434.PDF) and more generally when TPWD filed it directly in the docket on March 1, 2021, available at <http://interchange.puc.texas.gov/search/documents/?controlNumber=51023&itemNumber=598>. Therefore, said TPWD update letter could not have been addressed in SHLAA's direct testimony.

The SHLAA cross-rebuttal testimony does in fact consist of proper cross-rebuttal testimony rather than additional or supplemental direct testimony. It identifies the other intervenors whose testimony was filed, summarizes each of those other intervenors' positions so as to be able to respond thereto, and then provides specific responses thereto.

*Pages 1-6. Outside the scope of cross-rebuttal testimony.*

**RESPONSE:** Given the breadth of pages and different topics included therein to which Mr. Cichowski objects, it in essence constitutes a general objection which is no longer allowed. Therefore, his objection to those six pages should be overruled on that ground alone.

Without waiver of the foregoing, SHLAA responds to his objection because it is without any merit.

Pages 1 and part of 2 simply introduce the witnesses, provide the indication that the testimony is provided by all three of them "except to the extent identified otherwise in the answer to a particular question," and other preliminary matters necessary to set up the cross-rebuttal testimony. Therefore, it cannot be beyond the scope of cross-rebuttal, it is instead essential to it being provided in pre-filed format.

Parts of pages 2 and 3 address the additional water wells and additional habitable structures within 300 feet of Segments 26a and 15 identified in the SHLAA direct testimony, and indicates that CPS Energy does not dispute those. The testimony is proper rebuttal testimony and is not improper supplemental direct. Various intervenors have proposed use of routes through the SHLAA area. Water wells are included by CPS Energy in the information its application provides regarding land use constraints. Habitable structures are included by

CPS Energy in the information its application provides regarding the policy of prudent avoidance. The additional information provided in the SHLAA cross-rebuttal testimony addresses the land use constraints and prudent avoidance issues from using routes through the SHLAA area. It is therefore responsive to all intervenor testimonies which propose use of routes through the SHLAA area.

Parts of pages 3 and 4 recount the routes which SHLAA supported on direct, what the updated TPWD letter recommends and how that relates to the position of SHLAA, and summarizes which intervenors oppose selection of Routes Z1 and AA1. Recounting the earlier SHLAA position as a preliminary matter simply makes understandable how that position relates to the TPWD updated recommendation and the position of the other intervenors. The testimony is also in response to the direct testimony of Northside Independent School District (“NISD”) and the Barrera interests. NISD opposes use of Segments 41 and 35, and the Barrera interests oppose the use of Segment 35. The TPWD update letter recommends use of amended application Route DD, instead of original application Route AA (the amended application variant of which is Route AA1). Route DD uses Segments 41 and 35. The SHLAA cross-rebuttal testimony is therefore responsive to the NISD and Barrera interests direct testimonies, by indicating that SHLAA does not support use of Route DD since it uses Segments 41 and 35 instead of Segment 42a. Finally, the summary identification of which intervenors oppose use of Routes AA1 and Z1 is in direct response to the testimony provided by those other intervenors.

Part of page 4 and pages 5-6 deal with the positions of Anaqua Springs HOA (“Anaqua”) and Brad Jauer and BVJ Properties, LLC (“Jauer”). The line segments and routes affecting them are identified, the habitable structures they have within 300 feet of a line segment are also identified, and any areas of agreement between their positions and SHLAA’s are then asked about (with part of the answer thereto on page 6 and the rest of the answer carrying over to page 7). The facts regarding those intervenors and what those intervenors stated in their direct testimony are preliminary matters necessary to set up the cross-rebuttal testimony in response to their direct testimony.

*Page 7. Mischaracterization of the evidence and of Mr. Cichowski's testimony.*

**RESPONSE:** The objected-to-testimony questions concern what Mr. Cichowski stated in his direct testimony, and the objected-to-testimony answers provide facts in response thereto. A comparison of his testimony and the summary of it in the SHLAA cross-rebuttal

testimony questions will reveal no mischaracterizations. A comparison of the routing facts included in the answers with the CPS Energy application as amended as well as his own testimony as to those for whom he is testifying will also reveal no mischaracterizations.

Although Mr. Cichowski asserts that the testimony is a mischaracterization of evidence and his testimony, he simply wants to argue with the SHLAA witnesses about their responses to his direct testimony. Mr. Cichowski may explore the specific SHLAA testimony on cross examination and the Administrative Law Judges will be able to give the SHLAA testimony, as well as Rose Palace's disagreement with it, the appropriate weight.

*Page 8. Mischaracterization of the evidence and of Mr. Cichowski's testimony. Hearsay with regard to other homeowner opinions. Assumes facts not in evidence. Speculation as to what other homeowners support. Lack of foundation for conclusions offered.*

**RESPONSE:** The objected-to-testimony questions concern what Mr. Cichowski stated in his direct testimony, and the objected-to-testimony answers provide facts in response thereto. A comparison of his testimony and the summary of it in the SHLAA cross-rebuttal testimony questions will reveal no mischaracterizations. A comparison of the routing facts included in the answers with the CPS Energy application as amended, the personal knowledge facts offered by the SHLAA witnesses, and Mr. Cichowski's own testimony and exhibits will also reveal no mischaracterizations.

The testimony about the other SHLAA homeowners is not hearsay. The landowners are members of SHLAA. Hence, the landowners by their operative conduct of membership in SHLAA oppose the use of Substation Site 6 and instead support use of Substation 7 (even though Substation Site 7 has some impacts on them).

The testimony does not assume facts not in evidence and does not lack a foundation. The answers are grounded on the information in CPS Energy application as amended, the personal knowledge of the SHLAA witnesses, Mr. Cichowski's own photographic exhibits about Toutant Beauregard Road, and his own testimony as to those for whom he is testifying (and thereby who he is not testifying for in this case).

The testimony is not speculation as to the other SHLAA homeowners. The SHLAA fact witness cross-rebuttal testimony is based upon their personal knowledge and experience (p. 2); they are the same fact witnesses who provided SHLAA direct fact witness testimony (p. 1); and they are members of the SHLAA leadership group (SHLAA direct testimony pp. 2-3). They

therefore know the SHLAA position and who are the members of SHLAA. SHLAA and its members oppose the use of Substation Site 6 and instead support use of Substation 7.

Though Mr. Cichowski asserts that the testimony is a mischaracterization of evidence, speculation, etc., he simply wants to argue with the SHLAA fact witnesses about their testimony provided in response to his. Mr. Cichowski's disagreement with the SHLAA witnesses does not itself constitute proof that there is any mischaracterized evidence, etc. Mr. Cichowski may explore the specific SHLAA testimony on cross examination and the Administrative Law Judges will be able to give the SHLAA testimony, as well as Mr. Cichowski's disagreement with it, the appropriate weight.

*Page 9-10. Hearsay. Lack of Foundation.*

**RESPONSE:** It is assumed Mr. Cichowski objects to the testimony and photographs on page 9 and the first half of page 10 since the remainder of page 10 is only part of an answer to the question following the photographs.

The testimony is not hearsay. The landowners with the horse stable boarding business are members of SHLAA. Hence, the landowners by their operative conduct of membership in SHLAA oppose the use of Substation Site 6.

There is no lack of foundation for the testimony and photographs. Ms. Grimes is a member of the SHLAA leadership group, as noted above, and thus knows the SHLAA position and the SHLAA members. She also authenticated the photographs as true and accurate depictions of the stable.

*Pages 12-37. Lack of foundation or proper predicate. Improper lay opinion. Not in the nature of Cross-rebuttal testimony. Speculative as to the opinions of other Intervenors.*

**RESPONSE:** Given the breadth of pages and different topics included therein to which Mr. Cichowski objects, it in essence constitutes a general objection which is no longer allowed. Therefore, his objection to those twenty-six pages should be overruled on that ground alone.

Without waiver of the foregoing, SHLAA responds to his objection because it is without any merit.

Page 12 is where the SHLAA cross-rebuttal responses to the Anaqua and Jauer direct testimony are completed and the SHLAA cross-rebuttal responses to multiple specific other intervenors begin. Page 37 is where the SHLAA cross-rebuttal responses to multiple specific other intervenors are completed.

The SHLAA cross-rebuttal testimony is proper cross-rebuttal testimony. It identifies the other specific intervenors whose testimony was filed, summarizes each of those other intervenors' positions so as to be able to respond thereto, and then provides specific responses thereto.

There is no lack of foundation or proper predicate, improper lay opinion, or speculation as to the opinions of the other specific intervenors in that SHLAA cross-rebuttal testimony. It is based upon what is stated in those other intervenors' direct testimony, some of the exhibits some of the intervenor witnesses provided, the information in CPS Energy application as amended, and the personal knowledge of the SHLAA witnesses including authenticated photographs.

*Page 38. Hearsay as to conversation with unidentified Anaqua resident and unidentified Canyons developer. Mischaracterization of the evidence and position of other intervenors who have objected to CPS Energy forcing a landowner to support its favorite route in exchange for Route concessions.*

**RESPONSE:** The testimony concerns the actions of an Anaqua Springs HOA resident seeking consent of the Canyons developer of a possible route modification in a portion of Canyons (which is part of SHLAA). By definition, the only purpose for doing so is with regard to the litigation position of the parties on the issues in this case, and in support of the position of Anaqua Springs HOA in this docket.

The testimony is non-hearsay. The action of the Anaqua Springs HOA resident is operative conduct regarding the position of the Anaqua Springs HOA.

The testimony is not inadmissible hearsay. To the extent that the action of the Anaqua Springs HOA resident is a statement, it is regarding the position of the Anaqua Springs HOA, and thus is a statement by an opposing party and is provided by SHLAA against Anaqua Springs HOA. In addition, the door was opened to any such testimony by the opposition of those supporting Anaqua Springs HOA to the developer right of way donations.

The testimony also does not mischaracterize the evidence and position of other intervenors. The testimony matter-of-factly sets forth that some intervenors claim the developer right-of-way donations are improper. The testimony's question is not required to repeat all of the reasons why they claim such right-of-way donations are improper before responding to that question.

*Page 39. Repeat of direct Testimony. Not in the nature of Rebuttal testimony.*

**RESPONSE: The SHLAA cross-rebuttal testimony on pp. 39-40 is a summary of the cross-rebuttal testimony and not a mere repeat of direct testimony. It sets forth SHLAA's position in support of Route Z1 in light of the specific intervenor direct testimony to which it has specifically responded.**

WHEREFORE, PREMISES CONSIDERED, it is respectively requested that Mr. Cichowski's objections to SHLAA's cross-rebuttal testimony be overruled and the associated motions to strike denied.

Respectfully submitted,

By: /s/ Thomas K Anson  
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**ATTORNEYS FOR SHLAA**

Certificate of Service: I certify I served the foregoing under SOAH Order No. 3 on Apr. 5, 2021.

/s/ Thomas K Anson  
Thomas K. Anson